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| 10/716,566 | 11/20/2003 | Martin Cousineau | 672-B01.US | 7047 |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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In re Application of
Martin Cousineau
Application No. 10/716,566
Filed: November 20, 2003
For: HOSE CLAMP

DECISION ON PETITION
UNDER 37 CFR 1.181

This is in response to applicant's communication filed October 25, 2005 which was entered as a miscellaneous communication. The communication clearly states that it is not to be construed as a response to the Office action mailed September 14, 2005. The issues raised by this communication pertain to the completeness of the Office action. Accordingly, this communication will now be treated as a petition requesting a complete Office action.

The petition is **DENIED**.

Applicant alleges that the non-final rejection mailed September 14, 2005 is incomplete because the examiner has failed to address all of applicant's arguments from the previous response filed on August 5, 2005 and has failed to discharge his duty to establish a *prima facie* case of obviousness.

At the outset, it should be noted that "*prima facie*" case is nothing more than a procedural tool of patent examination which allocates burdens of going forward between the examiner and applicant. When obviousness is at issue, the examiner has the burden of persuasion and therefore the initial burden of production. Satisfying the burden of production, and thus initially the burden of persuasion, constitutes the so called *prima facie* showing. Once this burden has been met, applicant has the burden of production to demonstrate that the examiner's preliminary determination is not correct.

A review of the Office action of September 14, 2005 reveals that the Office action included a rejection under 35 U.S.C. 112, first paragraph, of claims 1-12 and 15-24 (sic, 16-24 since claim 15 was canceled) on page 3, a rejection under 35 U.S.C. 103(a) of claims 1-12 and 16-24 on pages 4-7, and a response to arguments on pages 8 and 9.

MPEP 2141 clearly sets forth the examination guidelines for an obviousness rejection. It is stated therein that "*these guidelines do not constitute substantive rule making and hence do not have the force and effect of law. They have been developed as a matter of internal Office management and are not intended to create any right or benefit, substantive or procedural, enforceable by any party against the Office... any failure by Office personnel to follow the guidelines is neither appealable nor petitionable.*" Further still, section IV of MPEP 2141 stated with respect to a reply from applicant that a mere statement that the Office has not established a *prima facie* case of obviousness will not be considered substantively adequate to rebut the rejection or an effective traverse of the rejection under 37 CFR 1.111(b).

Applicant makes reference to MPEP 707.07(f), MPEP 706.02(j) and 37 CFR 1.104(c)(2) in his allegations that the examiner has failed to address all of applicant's arguments. However, it is noted that applicant has not stated what arguments were not addressed. Accordingly, it appears that the gist of applicant's allegations is that the Office action is not considered to be detailed enough, though it is not explained what details are lacking. Nevertheless, the fact that applicant disagrees with the rejection of record is not an indication that the examiner failed to clearly explain his position or that the action is incomplete. Further, as previously noted above, merely alleging that a *prima facie* case was not set forth is not substantively adequate nor an effective traverse of the rejection.

Applicant's reference to 37 CFR 1.104(c)(2) and MPEP 706.02(j) to infer some omission on the part of the examiner is not persuasive. In particular, it is pointed out that the rejection of record utilizes numerous reference numerals to identify various parts of the reference being relied upon and includes identification of where the motivation is found in the secondary reference by column and line number.

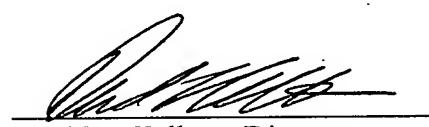
It is further noted that applicant's invention is drawn to a band clamp for a hose. A band clamp is not a complex invention. The references of the rejection are also band clamps. There is no strained interpretation of either of these references by the examiner and therefore the rejection of record is seen to provide a clear enough explanation of the position taken. Applicant has failed to explain why the examiner's rejection of record cannot be understood or why the applied references cannot be reviewed and understood.

With respect to MPEP 707.07(f) and the examiner's action, it is pointed out that page 8, paragraph 2, sets forth the response to applicant's argument regarding support for "stainless steel". Page 8, paragraph 4, and the paragraph bridging pages 8-9 set forth the response to applicant's arguments regarding lack of motivation and the references not being combinable.
- Page 8, paragraph 3, sets forth the response to applicant's arguments regarding the functional characteristics recited in the claim.

With respect to the comments regarding the denial of an interview after final rejection, it is pointed out that MPEP 713.09 sets forth the Office policy on such interviews. Applicant has provided no indication of any proposed changes to be discussed and none is found in the file record. Nevertheless, if the purpose was merely to restate arguments or otherwise sound out the examiner as opposed to presenting specific proposed changes, then MPEP 713.09 instructs that such interviews should be denied.

In summary, the previous Office action is deemed to be complete and responsive to the points raised by applicant in his response(s) and will not be withdrawn or vacated. The fact that applicant does not agree with the examiner's position or otherwise desires a more detailed explanation to be convinced is immaterial to the question of whether or not the examiner provided a response. Finally, the correctness of the examiner's position is an appealable issue, not a petitionable issue, and therefore will not be addressed herein.

Any questions regarding this decision should be directed to Supervisory Patent Examiner Daniel P. Stodola at (571) 272-7087.



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DS/LM: 6/14/10

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